

No. 46897-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Christopher Crocker,

Appellant.

Cowlitz County Superior Court Cause No. 14-1-00873-0

The Honorable Judge Stephen Warning

Appellant's Reply Brief

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ARGUMENT

I. THE SENTENCING COURT ERRED BY REFUSING TO “WASH OUT” MR. CROCKER’S 1999 CONVICTION BASED ON AN OREGON CONVICTION FOR CONDUCT THAT WOULD NOT HAVE BEEN A CRIME IN WASHINGTON.

Mr. Crocker was convicted of littering in Oregon in 2009. CP 2.

The conduct underlying his offense would not have constituted a crime in Washington unless the state proved additional facts. RCW 70.93.060(2)(a)-(c).

Absent the Oregon littering conviction, Mr. Crocker’s 1999 drug conviction would have “washed out”. This would mean that it would not have been included in his offender score. CP 2; RP 8; RCW 9.94A.525.

Because Mr. Crocker’s littering offense would not have been a “crime” if it had occurred in Washington, it does not qualify as “any crime” under RCW 9.94A.525(2)(c) and should not prevent his 1999 conviction from washing out.

Respondent frames the question in this case as “whether ‘any crime’ includes an out-of-state misdemeanor conviction.” Brief of Respondent, p. 4. The state mis-frames the analysis. Indeed, Mr. Crocker does not dispute that an Oregon misdemeanor conviction that constituted a “crime” in Washington would prevent wash-out.

Rather, the issue in this case is whether an out-of-state misdemeanor conviction constitutes “any crime” *when it would not qualify as a crime in Washington*.

As such, Mr. Crocker’s situation is analogous to one in which an offender had a conviction for desecrating of “cast[ing] contempt upon” a flag of the Confederate States of America, which is a misdemeanor in several states. *See* Fla. Stat. Ann. § 256.10; Ga. Code Ann. § 50-3-9; La. Rev. Stat. Ann. 14:116; Miss. Code. Ann. § 97-7-39; S.C. Code Ann. § 16-17-220.

The state argues that such conduct would clearly fall under the plain language of “any crime” in the wash-out-statute. Brief of Respondent, pp. 4-5. As discussed in Mr. Crocker’s Opening Brief, however, such actions that do not constitute a crime in Washington should not qualify as “any crime” under the plain language of RCW 9.94A.525.

If this court finds the phrase “any crime” ambiguous, the rule of lenity requires in construction in Mr. Crocker’s favor. *State v. Slattum*, 173 Wn. App. 640, 643, 295 P.3d 788 (2013) *review denied*, 178 Wn.2d 1010, 308 P.3d 643 (2013); *State v. Jacobs*, 154 Wn.2d 596, 599, 115 P.3d 281 (2005).

The court erred by increasing Mr. Crocker’s offender score by finding that his Oregon littering offense prevented washout of his 1999

conviction when it would not have been a crime in Washington. Mr. Crocker's case must be remanded for resentencing.

II. THE COURT EXCEEDED ITS AUTHORITY BY ORDERING MR. CROCKER TO PAY HIS LEGAL FINANCIAL OBLIGATIONS WITHIN 24 MONTHS AS A CONDITION OF HIS COMMUNITY CUSTODY.

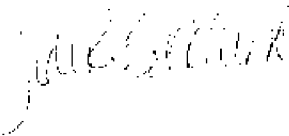
Mr. Crocker relies on the argument set forth in his Opening Brief.

CONCLUSION

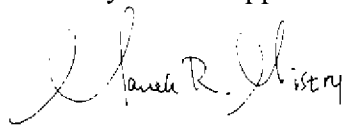
For the reasons set forth above and in the Opening Brief, Mr. Crocker's case must be remanded for resentencing.

Respectfully submitted on June 10, 2015,

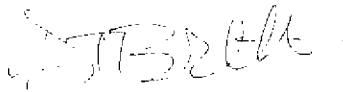
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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

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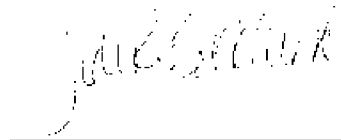
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on June 10, 2015.



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June 10, 2015 - 9:36 AM

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